

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 429 OF 2007

1. Pintu @ Vishnu Baburao Patil

2. Rajendra Sukhdev Gore ..Applicant
V/s

The State of Maharashtra ..Respondent.

Mr. Shirish Gupte, Senior Advocate for the applicant.

Mrs. M.H.Mhatre, APP for the respondent.

CORAM : J.H. BHATIA, J.

DATE : 14TH FEBRUARY, 2007.

P.C.

. Heard Mr. Shirish Gupte, Senior Counsel for the applicants and Mrs. Mhatre, learned APP for the State. Perused police papers.

2. The applicants seek to be released on bail in Crime No.61/2006 registered by Natepute Police Station, Tal.Malshiras, District Solapur for the offence punishable under Section 366, 366A and 376 r/w 34 of Indian Penal Code.

3. The prosecution case, in brief, is that the prosecutrix, aged about 15 years resident of Marakadwadi, used to attend 9th standard in a School at Kondshiras. For this purpose she used to travel on a

bicycle. On 14/9/2006 after school time, she was returning home on her bicycle as usual. At about 5.30 p.m. her cycle was intercepted with a Maruti van by applicant Nos. 1 and 2. The applicant No.1 dashed her bicycle and forcibly pushed her into the van. Applicant No.2 was driver of that van. They took her to different places in the van and finally she was taken to his relative's house on 19/9/2006. Applicant No.1 told his relatives that the prosecutrix is his wife and they had married by exchanging garlands and they would live there for about 4 to 5 days. Accordingly, they lived there upto 24th September, 2006. During that period, applicant No.1 had also committed rape on her. On 25th September, 2006 morning, he took her to Baramati stand and from there he informed her relatives on phone and thereafter the girl was taken back to her house by the relatives. It appears that the offence of rape was committed by the present applicant No. 1 and applicant No.2 had assisted him in the offence of kidnapping. Applicant No.2 was driving Maruti Van when this offence was committed. As per School record date of birth of the girl is 2nd July, 1991. Thus, she was just 15 years and 2 months old when this incident occurred. After investigation charge-sheet has been filed.

4. The learned Senior Counsel has shown me two photographs of the prosecutrix with the applicant No.1 and one more relative to show that age of the girl appears to be more than 15 years and in fact may be 18 years or more than that. On the basis of photographs only, it is difficult to assess the age of the girl. Learned Senior Counsel also contended that the applicant No.1 and prosecutrix were in love and they had married. However, there is no material on record to show that they were in love and that she had left the house willingly nor there is any evidence about their marriage. Only because she could not resist after she was kidnapped and was taken from time to time it cannot be inferred that she was a consenting party. If she was less than 16 years old, her consent for sexual intercourse or for eloping was irrelevant.

5. Taking into consideration the circumstances in which the offence was committed, I am not inclined to grant bail.

6. Application stands rejected. The learned trial Court shall expedite the trial and dispose of the matter

as early as possible.

(J.H. BHATIA, J.)